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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JERRY DALE SIGMAN,

Defendant and Appellant.

C064924

(Super. Ct. No. SF101077A)

Defendant Jerry Dale Sigman appeals his convictions for robbery (Pen. Code, § 211), escape from custody (Pen. Code, § 4530, subd. (b)), unlawful taking of a vehicle (Veh. Code, § 10851),<sup>1</sup> evading a police officer (§ 2800.1), possession of a firearm by a felon, (Pen. Code, § 12021, subd. (a)(1)), possession of ammunition by a felon (Pen. Code, § 12316, subd. (b)(1)), and misdemeanor hit and run (§ 20002, subd. (a)). Defendant contends (1) the trial court abused its discretion in ordering him shackled during trial, and (2) there was insufficient evidence to support his conviction for evading a

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<sup>1</sup> Undesignated statutory references are to the Vehicle Code.

police officer. Based on defendant's escape attempts and rule violations, the trial court did not abuse its discretion in ordering an ankle shackle attached to the floor during trial. The shackle was unobtrusive and the jury could not see the ankle shackle. With respect to the conviction for evading a police officer, there is uncontradicted and credible evidence that the marked vehicle chasing defendant had its forward facing red and blue flashing overhead lights activated. Accordingly, we affirm the judgment.

#### FACTUAL BACKGROUND

In July 2006, defendant was in custody in Vacaville, working as part of a supervised detail landscaping the grounds of Napa State Hospital. The morning of July 21, 2006, defendant disappeared from the grounds. His lime green prison suit was later found in nearby bushes. Around 1:00 p.m. that afternoon, defendant was seen by several witnesses, and captured on videotape, robbing a bank in Stockton. Witnesses also saw defendant get in a red pickup truck, leave the bank, and drive to the freeway.

Officer Smallie was in an unmarked police car when he heard a report of the bank robbery and saw the red pickup truck get on the freeway. The driver of the truck sped and wove through traffic, exited the freeway, and continued on surface streets traveling about 60 miles per hour. At that point, Smallie activated his lights and siren. Another officer, Lieutenant Pickens, also was following defendant in an unmarked car. Officer Howard then joined the pursuit, driving his marked

police SUV. The SUV was equipped with sirens and forward facing red and blue flashing overhead lights. During his pursuit of defendant, Howard was in uniform, and the lights and sirens of the vehicle were activated.

Defendant drove down a dead end street, jumped out of the truck and ran about 20 feet with a gun in his hand, ignoring orders from the police to stop. He then dropped the gun, jumped over a fence, and swam into a canal. When he got to the other side of the canal, he hid in a clump of weeds for five to six minutes until he finally surrendered and was arrested.

Defendant claimed he had been running a tobacco smuggling operation in the prison, with tobacco supplied by two agents from the Investigative Services Unit (ISU). He began to have conflicts with the agents and the "mules" used to smuggle the tobacco, so he contacted his cousin, Richard Garcia, to help him temporarily escape from custody. Garcia agreed and helped defendant escape. After meeting defendant near Napa State Hospital, Garcia had to go pick up a couple of checks. Defendant stayed in the truck while Garcia went inside a building to pick up a check. When Garcia returned to the truck, he told defendant he had just robbed a bank, they needed to get rid of the truck, split up, and run on foot. Garcia left on foot and defendant drove off in the truck. While driving away, defendant saw an unmarked vehicle with a "red siren." The car followed him onto a dead end street. As defendant got out of the truck, he reflexively grabbed a gun and took it with him, climbed a fence, ran to the canal, and jumped in to swim across.

## TRIAL COURT PROCEEDINGS

Defendant made a motion to prohibit him from being shackled during trial. The trial court held a hearing on the matter, at which the head of courtroom security, Sergeant Donald Benbrook, testified. Based on defendant's incarceration history, as well as present and past allegations of escape, evasion, and robbery, defendant was guarded with extra security and had been classified for housing in the highest level security.

While in custody awaiting trial on these charges, defendant committed a number of rule violations. In March 2007, defendant removed at least eight screen bars, two interior windows and one window frame from his cell. He was also in possession of cylindrical rolled up newspaper and a fish line. The cylindrical newspaper was used to mimic the appearance of the missing bars and disguise their absence. He was placed in administrative segregation (Ad-Seg) for an attempted escape with force. Three months later, while in Ad-Seg, defendant possessed a manufactured razor with a handle and two manufactured handcuff keys. He was charged with possession of a deadly weapon and possession of escape paraphernalia. In May 2009, defendant was found with fish lines and paper rolled up tightly into a long cylindrical shape. The rolled paper could be used as a weapon or a makeshift bar on a cell.

On two other occasions, defendant caused structural damage to his cell. In November 2009, the light above his vanity was loose and the screws from the towel hook were missing. Two weeks later, screws from the towel hook were again missing.

Damaged light fixtures were a concern because inmates had tunneled through the light fixtures to get out of their cells.

Defendant also repeatedly violated prison rules by making pruno, prison wine. In May 2009, defendant was acting strangely and smelled of alcohol. A search of his cell revealed a tumbler of pruno. He was charged with possession of an unauthorized beverage, being under the influence of alcohol, and activity endangering staff, officers, or an inmate. One month later, while still in Ad-Seg, a correctional officer noticed a strong smell of alcohol coming from defendant's cell. Defendant was told to "cuff up" (put his hands through the food slot so he could be cuffed) so his cell could be searched. Defendant refused. Instead, he took out a bag full of pruno and flushed it down the toilet. After flushing it, he agreed to "cuff up." He was charged with possession of an unauthorized beverage, blatant refusal to comply with a lawful order, and action endangering the safety of another.

While in custody before trial on these charges, defendant had made 54 appearances in the San Joaquin County Superior Court, had not attempted to escape or attack anyone, had possessed no weapons in court, had not refused to come to court, and had not caused any disturbances in court.

Based on the testimony of Sergeant Benbrook, the charged escape offense, the apparent escape efforts while in custody on the current charges, and the totality of the circumstances, the trial court found it was necessary to restrain defendant. Sergeant Benbrook recommended defendant be placed in leg

shackles and a waist chain attached to the floor with an I-bolt. The court ordered the less restrictive restraint of an ankle shackle attached to the floor, with no waist chain. Defendant's feet were not shackled together and his hands were free so he could take notes. The chain was coated in rubber so it would not make noise. The court noted the shackle would not be visible to the jury.

The next day, after defendant was shackled, defense counsel noted for the record that although there was a skirt around the table, he believed when the jury panel came in for selection, they would be able to see the shackle. The prosecutor disagreed. The court indicated the jurors' view would be blocked and there was no question the shackle could not be seen from the jury box. Defense counsel agreed the shackle could not be seen from the jury box.<sup>2</sup> The court offered a robe to put over defendant's lap, which defendant rejected. There is no indication in the record that the jury could see or hear the shackle.

Following a jury trial, defendant was convicted of robbery (Pen. Code, § 211), escape from custody (Pen. Code, § 4530, subd. (b)), unlawful taking of a vehicle (§ 10851), evading a police officer (§ 2800.1), possession of a firearm by a felon, (Pen. Code, § 12021, subd. (a)(1)), possession of ammunition by a felon (Pen. Code, § 12316, subd. (b)(1)), and misdemeanor hit

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<sup>2</sup> Photographs were taken of the restraints from various locations in the courtroom, but they were not made part of the record on appeal.

and run (§ 20002, subd. (a)). The jury also found the personal firearm use enhancement allegation attached to the robbery conviction true. (Pen. Code, § 12022.53, subd. (b).) Defendant was sentenced to an aggregate term of 37 years to life and various fines and fees were imposed. He was awarded 1,582 days presentence custody credit.<sup>3</sup>

## DISCUSSION

### I

#### *Shackling Order*

Defendant contends the trial court abused its discretion in ordering him to wear a leg shackle during trial because the prosecution did not establish there was a manifest need for restraint. We are not persuaded.

A criminal defendant may be shackled at trial in the presence of the jury only as a last resort and only upon a showing of manifest need. (*People v. Duran* (1976) 16 Cal.3d 282, 290-292.) A defendant's conduct in custody, an expressed intent to escape or actual attempted escapes, or other nonconforming conduct during the trial will support a finding of manifest need. (*People v. Jacla* (1978) 77 Cal.App.3d 878, 884; see *People v. Stabler* (1962) 202 Cal.App.2d 862, 863-864 [the defendant attempted to escape from county jail while awaiting trial on other escape charges]; *People v. Burnett* (1967) 251 Cal.App.2d 651, 655 [evidence of an escape attempt]; *People*

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<sup>3</sup> Because defendant had prior strike convictions, the amendments to Penal Code sections 4019 and 2933 do not affect the calculation of his presentence custody credits.

*v. Kimball* (1936) 5 Cal.2d 608, 611 [the defendants expressed an intention to escape]; *People v. Condley* (1977) 69 Cal.App.3d 999, 1006 [prior felony conviction for escape and two recent escape attempts]; and *People v. Duran, supra*, 16 Cal.3d at p. 291 [list of cases with circumstances demonstrating manifest need].) We review the trial court's decision to impose restraints for an abuse of discretion. (*People v. Mar* (2002) 28 Cal.4th 1201, 1217.)<sup>4</sup>

This record amply demonstrates there was a manifest need to restrain defendant. Defendant was on trial for escaping from custody. During that escape, he committed a robbery and while trying to avoid recapture, engaged in a high speed chase, exited the truck and fled on foot with a gun in hand, ignored orders from pursuing officers, and attempted to hide from them. While in custody awaiting trial on these charges, he engaged in various acts suggesting he intended to attempt another escape. He removed window frames and bars from his cell and constructed

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<sup>4</sup> In *People v. Valenzuela* (1984) 151 Cal.App.3d 180, this court noted that the California Supreme Court's decision in *Duran, supra*, 16 Cal.3d 282, has generally been read to require "that a defendant make specific threats of violence or escape from court or demonstrate unruly conduct in court before in-court restraints are justified." (*Valenzuela, supra*, 151 Cal.App.3d at pp. 192-193.) More recently, however, the California Supreme Court held that a defendant's out-of-court misconduct can support a finding of manifest need justifying courtroom restraints. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1050 [evidence of defendant's rules violations in jail while awaiting trial was sufficient to support the trial court's decision to restrain defendant].) In addition, because the instant case does not involve restraints that could be seen or heard by the jury, this case does not implicate heightened scrutiny. (*People v. Stevens* (2009) 47 Cal.4th 625, 633.)

makeshift bars from rolled paper to conceal the fact that bars were missing. He was charged with attempted escape with force. Later, he was found in possession of potential escape paraphernalia, paper rolled in a similar fashion and fish lines. Defendant's light fixture was damaged in a way that had previously been used by inmates to tunnel out of a cell, also suggesting a possible future escape attempt. And, defendant was found in possession of makeshift handcuff keys and was charged with possession of escape paraphernalia.

In addition, while awaiting trial, defendant repeatedly violated prison rules and engaged in nonconforming behavior. He was found in possession of a makeshift razor blade and charged with possession of a deadly weapon. The cylindrical rolled up paper found in his cell could be used not only to disguise missing cell bars, but also could be used as a weapon. Defendant refused to comply with a direct order from a correctional officer to "cuff up," and was twice found in possession of pruno and charged with endangering the safety of others. Defendant's "ambulant propensities" (*People v. Burnett, supra*, 251 Cal.App.2d at p. 655; see also *People v. Wallace, supra*, 44 Cal.4th at p. 1050; *People v. Stabler, supra*, 202 Cal.App.2d at pp. 863-863) and rule violations, including possession of weapons, disobeying direct orders from correctional officers, and endangering others, supports the conclusion that there was a manifest need to restrain him during trial.

Even with a finding of manifest need, the restraints must be as unobtrusive as possible while remaining as effective as necessary. (*People v. Mar*, *supra*, 28 Cal.4th at p. 1217.) The restraints here were less restrictive than Sergeant Benbrook recommended. The trial court ordered a single leg shackle attached to a bolt in the floor. Defendant's hands remained free. The chain was coated in rubber so it would not make noise when defendant moved and the defense table was covered with a table skirt. The shackle could not be seen from the jury box. Defendant testified and there is no indication the shackle inhibited his ability to participate in his own defense. On this record, the restraints used were as unobtrusive as possible. Accordingly, we find the trial court did not abuse its discretion in ordering defendant shackled during trial.<sup>5</sup>

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<sup>5</sup> Contained within defendant's argument is some discussion of jury instructions given and not given. Specifically, instructing the jury not to consider the fact that he was shackled (CALCRIM No. 204) and not instructing the jury, *sua sponte*, on the defense of necessity as to the escape charge. (CALCRIM No. 3403.) We do not address these discussions as separate arguments for two reasons. First, these arguments were not presented under a separate argument heading, showing the nature of the question to be presented and the point to be made, as required under California Rules of Court, rule 8.204(a)(1)(B). (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 840.) Accordingly, we may treat the contentions as forfeited. (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *People v. Meyer* (1963) 216 Cal.App.2d 618, 635.) Second, to the extent defendant complains of instructional errors, they are discussed in the context of analyzing whether the claimed error, ordering him restrained during trial, was prejudicial. Our determination that there was no such error obviates the need for us to discuss prejudice.

## II

### *Sufficiency of Evidence for Evading a Police Officer Conviction*

Defendant next contends there is insufficient evidence to sustain his conviction for evading a police officer.

(§ 2800.1.) He argues because the officers testified only that Officer Howard's lights were on, there was no substantial evidence to support a finding that the lights activated included a "forward facing red lamp." We disagree.

When a conviction is challenged for lack of substantial evidence, we review the record in the light most favorable to the judgment, resolving all conflicts and drawing all inferences in support of the verdict to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053; *People v. Jackson* (1989) 49 Cal.3d 1170, 1199-1200.)

To establish the crime of reckless evasion, "the statute requires four distinct elements, each of which must be present: (1) a red light, (2) a siren, (3) a distinctively marked vehicle, and (4) a peace officer in a distinctive uniform." (*People v. Hudson* (2006) 38 Cal.4th 1002, 1008; see § 2800.1, subd. (a)(1)-(4).) Defendant challenges only the element of whether the red light on Officer Howard's vehicle was activated.

Officer Howard testified that his marked vehicle had forward facing red and blue flashing overhead lights. He had his lights on as he pursued defendant. His testimony was

uncontradicted and credible. (*People v. Estrella* (1995) 31 Cal.App.4th 716, 724-25.)

Relying on *People v. Brown* (1989) 216 Cal.App.3d 596 (*Brown*) and *People v. Acevedo* (2003) 105 Cal.App.4th 195 (*Acevedo*), defendant argues "[e]vidence that merely indicates that a police car's lights were on without delineating the color is not sufficient to sustain a conviction for evading the police." Each of these cases is distinguishable from the instant case.

In *Brown*, the pursuing officer testified different switch positions activated different colored lights, some of which were not red and not forward facing. The officer remembered activating the overhead lights, but could not recall which lights. (*Brown, supra*, 216 Cal.App.3d at pp. 599-600.) Unlike *Brown*, there is no evidence that different switch positions activated different colored lights, some of which were not red and not forward facing. Nor is there evidence that Officer Howard was unsure which lights were activated. His testimony established that he activated his forward facing red and blue flashing overhead lights.

In *Acevedo*, there was a complete absence of evidence that the vehicle was equipped with a red forward-facing light. (*Acevedo, supra*, 105 Cal.App.4th at p. 197.) Thus, the officer's testimony that he activated his emergency lights without any evidence as to the color of the vehicle's lights or their position was insufficient to sustain the conviction. (*Id.* at p. 199.) By contrast, Officer Howard testified that the

vehicle was equipped with forward facing red and blue flashing overhead lights. Thus, when he testified he had his "lights on," the jury could reasonably infer that he meant all the lights he had described were activated, which included the forward facing red light. Accordingly, there was substantial evidence to support the conviction for evading a police officer.

DISPOSITION

The judgment is affirmed.

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HOCH, J.

We concur:

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HULL, Acting P. J.

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MAURO, J.